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OFFICE OF PETITIONS

In re Application of
Annette C. Grot et al.
Application No. 10/729,508
Filed: December 5, 2003
Attorney Docket No. 10004289-1

:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:

This is in response to the petition filed under 37 CFR 1.47(a) on December 5, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a), and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 5, 2003 naming Annette C. Grot and Thomas J. Mikes as inventors but without a signed declaration. The present petition was also filed on December 5, 2003 with a declaration signed only by joint inventor Annette C. Grot. Petitioners assert that the Attorney Jon E. Holland had several telephone conversations with joint inventor Thomas J. Mikes regarding the application up until about March 2003 wherein, numerous telephone calls and E-mail messages were made to the non-signing inventor, Thomas J. Mikes, and that none of the subsequent phone calls or E-mail messages were returned. Petitioners seek status under 37 CFR 1.47(a) since they have been unsuccessful in reaching Mr. Mikes with respect to this application since March 2003.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

In regards to item (1), petitioners have not provided sufficient proof that a copy of the complete application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor.

The statement made by the attorney of record suggests that telephone conversations and E-mail messages were exchanged between Mr. Holland and Mr. Mikes for a period of time. However, the information provided by Mr. Holland does not suggest that in that period of time when Mr. Holland and Mr. Mikes were in communications, that a copy of the application was ever sent to Mr. Mikes.

The evidence presented does not bear proof that Mr. Mikes has had the opportunity to review the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

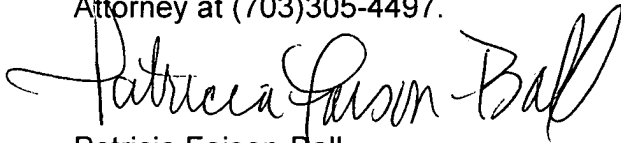
Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.

A handwritten signature in cursive script, reading "Patricia Faison-Ball".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions